

104TH CONGRESS
1ST SESSION

S. 171

To amend title XIX of the Social Security Act to provide for coverage of alcoholism and drug dependency residential treatment services for pregnant women and certain family members under the medicaid program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 5, 1995

Mr. DASCHLE (for himself, Mr. SIMON, Mr. KENNEDY, Mr. KERRY, Mr. REID, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to provide for coverage of alcoholism and drug dependency residential treatment services for pregnant women and certain family members under the medicaid program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Medicaid Substance
5 Abuse Treatment Act".

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds that—

1 (1) a woman's ability to bear healthy children
2 is threatened by the consequences of alcoholism and
3 drug addiction;

4 (2) an estimated 375,000 infants each year are
5 born drug-exposed, at least 5,000 infants are born
6 each year with fetal alcohol syndrome, and another
7 35,000 are born each year with fetal alcohol effect,
8 a less severe version of fetal alcohol syndrome;

9 (3) drug use during pregnancy can result in low
10 birthweight, physical deformities, mental retardation,
11 learning disabilities, and heightened nervousness and
12 irritability in newborns;

13 (4) fetal alcohol syndrome is the leading identi-
14 fiable cause of mental retardation in the United
15 States and the only cause that is 100 percent pre-
16 ventable;

17 (5) drug-impaired individuals pose extraor-
18 dinary societal costs in terms of medical, edu-
19 cational, foster care, residential, and support serv-
20 ices over the lifetimes of such individuals;

21 (6) women, in general, are underrepresented in
22 drug and alcohol treatment programs;

23 (7) due to fears among service providers con-
24 cerning the risks pregnancies pose, pregnant women
25 face more obstacles to substance abuse treatment

1 than do other addicts and many substance abuse
2 treatment programs, in fact, exclude pregnant
3 women or women with children;

4 (8) alcohol and drug treatment is an important
5 prevention strategy to prevent low birthweight,
6 transmission of AIDS, and chronic physical, mental,
7 and emotional disabilities associated with prenatal
8 exposure to alcohol and other drugs;

9 (9) effective substance abuse treatment must
10 address the special needs of pregnant women who
11 are alcohol or drug dependent, including substance-
12 abusing women who may often face such problems
13 as domestic violence, incest and other sexual abuse,
14 poor housing, poverty, unemployment, lack of edu-
15 cation and job skills, lack of access to health care,
16 emotional problems, chemical dependency in their
17 family backgrounds, single parenthood, and the need
18 to ensure child care for existing children while un-
19 dergoing substance abuse treatment;

20 (10) nonhospital residential treatment is an im-
21 portant component of comprehensive and effective
22 substance abuse treatment for pregnant addicted
23 women, many of whom need long-term, intensive ha-
24 bilitation outside of their communities to recover

1 from their addiction and take care of themselves and
2 their families; and

3 (11) a gap exists under the medicaid program
4 for the financing of comprehensive residential care
5 in the existing continuum of medicaid-covered alco-
6 holism and drug abuse treatment services for low-in-
7 come pregnant addicted women.

8 (b) PURPOSES.—The purposes of this Act are—

9 (1) to increase the ability of pregnant women
10 who are substance abusers to participate in alcohol
11 and drug treatment;

12 (2) to ensure the availability of comprehensive
13 and effective treatment programs for pregnant
14 women, thus promoting a woman's ability to bear
15 healthy children;

16 (3) to ensure that nonhospital residential treat-
17 ment is available to those low-income pregnant ad-
18 dicted women who need long-term, intensive habili-
19 tation to recover from their addiction;

20 (4) to create a new optional medicaid residen-
21 tial treatment service for alcoholism and drug de-
22 pendency treatment; and

23 (5) to define the core services that must be pro-
24 vided by treatment providers to ensure that needed
25 services will be available and appropriate.

1 SEC. 3. MEDICAID COVERAGE OF ALCOHOLISM AND DRUG
2 DEPENDENCY RESIDENTIAL TREATMENT
3 SERVICES FOR PREGNANT WOMEN, CARE-
4 TAKER PARENTS, AND THEIR CHILDREN.

5 (a) COVERAGE OF ALCOHOLISM AND DRUG DEPEND-
6 ENCY RESIDENTIAL TREATMENT SERVICES.—

7 (1) OPTIONAL COVERAGE.—Section 1905 of the
8 Social Security Act (42 U.S.C. 1396d) is amended—

9 (A) in subsection (a)—

10 (i) by striking “and” at the end of
11 paragraph (21);

12 (ii) in paragraph (24), by striking the
13 period at the end and inserting a semi-
14 colon;

15 (iii) by redesignating paragraphs (22),
16 (23), and (24) as paragraphs (25), (22),
17 and (23), respectively, and by transferring
18 and inserting paragraph (25) after para-
19 graph (23), as so redesignated; and

20 (iv) by inserting after paragraph (23)
21 the following new paragraph:

22 “(24) alcoholism and drug dependency residen-
23 tial treatment services (to the extent allowed and as
24 defined in section 1931); and”; and

25 (B) in the sentence following paragraph
26 (25), as so redesignated—

1 (i) in subdivision (A), by striking “or”
 2 at the end;

3 (ii) in subdivision (B), by inserting “,
 4 who is not receiving alcoholism and drug
 5 dependency residential treatment services,”
 6 after “65 years of age”; and

7 (iii) by inserting after subdivision (B)
 8 the following:

9 “(C) any such payments with respect to alcohol-
 10 ism and drug dependency residential treatment serv-
 11 ices under paragraph (24) for individuals not de-
 12 scribed in section 1931(d).”.

13 (2) ALCOHOLISM AND DRUG DEPENDENCY RES-
 14 IDENTIAL TREATMENT SERVICES DEFINED.—Title
 15 XIX of the Social Security Act (42 U.S.C. 1396 et
 16 seq.) is amended by adding at the end the following
 17 new section:

18 “ALCOHOLISM AND DRUG DEPENDENCY RESIDENTIAL
 19 TREATMENT SERVICES

20 “SEC. 1931. (a) ALCOHOLISM AND DRUG DEPEND-
 21 ENCY RESIDENTIAL TREATMENT SERVICES.—The term
 22 ‘alcoholism and drug dependency residential treatment
 23 services’ means all the required services described in sub-
 24 section (b) which are provided—

25 “(1) in a coordinated manner by a residential
 26 treatment facility that meets the requirements of

subsection (c) either directly or through arrangements with—

“(A) public and nonprofit private entities;

“(B) licensed practitioners or federally qualified health centers with respect to medical services; or

“(C) the Indian Health Service or a tribal or Indian organization that has entered into a contract with the Secretary under section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) or section 502 of the Indian Health Care Improvement Act (25 U.S.C. 1652) with respect to such services provided to women eligible to receive services in Indian Health Facilities; and

“(2) pursuant to a written individualized treatment plan prepared for each individual, which plan—

“(A) states specific objectives necessary to meet the individual’s needs;

“(B) describes the services to be provided to the individual to achieve those objectives;

“(C) is established in consultation with the individual;

1 “(D) is periodically reviewed and (as ap-
2 propriate) revised by the staff of the facility in
3 consultation with the individual;

4 “(E) reflects the preferences of the individ-
5 ual; and

6 “(F) is established in a manner which pro-
7 motes the active involvement of the individual
8 in the development of the plan and its objec-
9 tives.

10 “(b) REQUIRED SERVICES DEFINED.—

11 “(1) IN GENERAL.—The required services de-
12 scribed in this subsection are as follows:

13 “(A) Counseling, addiction education, and
14 treatment provided on an individual, group, and
15 family basis and provided pursuant to individ-
16 ualized treatment plans, including the oppor-
17 tunity for involvement in Alcoholics Anonymous
18 and Narcotics Anonymous.

19 “(B) Parenting skills training.

20 “(C) Education concerning prevention of
21 HIV infection.

22 “(D) Assessment of each individual’s need
23 for domestic violence counseling and sexual
24 abuse counseling and provision of such counsel-
25 ing where needed.

1 “(E) Room and board in a structured envi-
2 ronment with on-site supervision 24 hours-a-
3 day.

4 “(F) Therapeutic child care or counseling
5 for children of individuals in treatment.

6 “(G) Assisting parents in obtaining access
7 to—

8 “(i) developmental services (to the ex-
9 tent available) for their preschool children;

10 “(ii) public education for their school-
11 age children, including assistance in enroll-
12 ing them in school; and

13 “(iii) public education for parents who
14 have not completed high school.

15 “(H) Facilitating access to prenatal and
16 postpartum health care for women, to pediatric
17 health care for infants and children, and to
18 other health and social services where appro-
19 priate and to the extent available, including
20 services under title V, services and nutritional
21 supplements provided under the special supple-
22 mental food program for women, infants, and
23 children (WIC) under section 17 of the Child
24 Nutrition Act of 1966, services provided by fed-
25 erally qualified health centers, outpatient pedi-

1 atric services, well-baby care, and early and
2 periodic screening, diagnostic, and treatment
3 services (as defined in section 1905(r)).

4 “(I) Ensuring supervision of children dur-
5 ing times their mother is in therapy or engaged
6 in other necessary health or rehabilitative ac-
7 tivities, including facilitating access to child
8 care services under title IV and title XX.

9 “(J) Planning for and counseling to assist
10 reentry into society, including appropriate out-
11 patient treatment and counseling after dis-
12 charge (which may be provided by the same
13 program, if available and appropriate) to assist
14 in preventing relapses, assistance in obtaining
15 suitable affordable housing and employment
16 upon discharge, and referrals to appropriate
17 educational, vocational, and other employment-
18 related programs (to the extent available).

19 “(K) Continuing specialized training for
20 staff in the special needs of residents and their
21 children, designed to enable such staff to stay
22 abreast of the latest and most effective treat-
23 ment techniques.

24 “(2) REQUIREMENT FOR CERTAIN SERVICES.—
25 Services under subparagraphs (A), (B), (C), and

(D), of paragraph (1) shall be provided in a cultural context that is appropriate to the individuals and in a manner that ensures that the individuals can communicate effectively, either directly or through interpreters, with persons providing services.

“(3) LIMITATIONS ON COVERAGE.—

“(A) IN GENERAL.—Subject to subparagraph (B), services described in paragraph (1) shall be covered in the amount, duration, and scope therapeutically required for each eligible individual in need of such services.

“(B) RESTRICTIONS ON LIMITING COVERAGE.—A State plan shall not limit coverage of alcoholism and drug dependency residential treatment services for any period of less than 12 months per individual, except in those instances where a finding is made that such services are no longer therapeutically necessary for an individual.

“(c) FACILITY REQUIREMENTS.—The requirements of this subsection with respect to a facility are as follows:

“(1) The agency designated by the chief executive officer of the State to administer the State’s alcohol and drug abuse prevention and treatment activities and programs has certified to the single

1 State agency under section 1902(a)(5) that the facil-
2 ity—

3 “(A) is able to provide all the services de-
4 scribed in subsection (b) either directly or
5 through arrangements with—

6 “(i) public and nonprofit private enti-
7 ties;

8 “(ii) licensed practitioners or federally
9 qualified health centers with respect to
10 medical services; or

11 “(iii) the Indian Health Service or
12 with a tribal or Indian organization that
13 has entered into a contract with the Sec-
14 retary under section 102 of the Indian
15 Self-Determination Act (25 U.S.C. 450f)
16 or section 502 of the Indian Health Care
17 Improvement Act (25 U.S.C. 1652) with
18 respect to such services provided to women
19 eligible to receive services in Indian Health
20 Facilities; and

21 “(B) except for Indian Health Facilities,
22 meets all applicable State licensure or certifi-
23 cation requirements for a facility of that type.

24 “(2)(A) The facility or a distinct part of the fa-
25 cility provides room and board, except that—

“(i) subject to subparagraph (B), the facility shall have no more than 40 beds; and

“(ii) subject to subparagraph (C), the facility shall not be licensed as a hospital.

“(B) The single State agency may waive the bed limit under subparagraph (A)(i) for one or more facilities subject to review by the Secretary. Waivers, where granted, must be made pursuant to standards and procedures set out in the State plan and must require the facility seeking a waiver to demonstrate that—

“(i) the facility will be able to maintain a therapeutic, family-like environment;

“(ii) the facility can provide quality care in the delivery of each of the services identified in subsection (b);

“(iii) the size of the facility will be appropriate to the surrounding community; and

“(iv) the development of smaller facilities is not feasible in that geographic area.

“(C) The Secretary may waive the requirement under subparagraph (A)(ii) that a facility not be a hospital, if the Secretary finds that such facility is located in an Indian Health Service area and that such facility is the only or one of the only facilities

1 available in such area to provide services under this
2 section.

3 “(3) With respect to a facility providing the
4 services described in subsection (b) to an individual
5 eligible to receive services in Indian Health Facili-
6 ties, such a facility demonstrates (as required by the
7 Secretary) an ability to meet the special needs of In-
8 dian and Native Alaskan women.

9 “(d) ELIGIBLE INDIVIDUALS.—

10 “(1) IN GENERAL.—A State plan shall limit
11 coverage of alcoholism and drug dependency residen-
12 tial treatment services under section 1905(a)(24) to
13 the following individuals otherwise eligible for medi-
14 cal assistance under this title:

15 “(A) Women during pregnancy, and until
16 the end of the 12th month following the termi-
17 nation of the pregnancy.

18 “(B) Children of a woman described in
19 subparagraph (A).

20 “(C) At the option of a State, a caretaker
21 parent or parents and children of such a
22 parent.

23 “(2) INITIAL ASSESSMENT OF ELIGIBLE INDI-
24 VIDUALS.—An initial assessment of eligible individ-
25 uals specified in paragraph (1) seeking alcoholism

1 and drug dependency residential treatment services
2 shall be performed by the agency designated by the
3 chief executive officer of the State to administer the
4 State's alcohol and drug abuse treatment activities
5 (or its designee). Such assessment shall determine
6 whether such individuals are in need of alcoholism or
7 drug dependency treatment services and, if so, the
8 treatment setting (such as inpatient hospital,
9 nonhospital residential, or outpatient) that is most
10 appropriate in meeting such individual's health and
11 therapeutic needs and the needs of such individual's
12 dependent children, if any.

13 “(e) OVERALL CAP ON MEDICAL ASSISTANCE AND
14 ALLOCATION OF BEDS.—

15 “(1) TOTAL AMOUNT OF SERVICES AS MEDICAL
16 ASSISTANCE.—

17 “(A) IN GENERAL.—The total amount of
18 services provided under this section as medical
19 assistance for which payment may be made
20 available under section 1903 shall be limited to
21 the total number of beds allowed to be allocated
22 for such services in any given year as specified
23 under subparagraph (B).

24 “(B) TOTAL NUMBER OF BEDS.—The total
25 number of beds allowed to be allocated under

1 this subparagraph (subject to paragraph
2 (2)(C)) for the furnishing of services under this
3 section and for which Federal medical assist-
4 ance may be made available under section 1903
5 is for calendar year—

6 “(i) 1995, 1,080 beds;

7 “(ii) 1996, 2,000 beds;

8 “(iii) 1997, 3,500 beds;

9 “(iv) 1998, 5,000 beds;

10 “(v) 1999, 6,000 beds; and

11 “(vi) 2000 and for calendar years
12 thereafter, a number of beds determined
13 appropriate by the Secretary.

14 “(2) ALLOCATION OF BEDS.—

15 “(A) INITIAL ALLOCATION FORMULA.—For
16 each calendar year, a State exercising the op-
17 tion to provide the services described in this
18 section shall be allocated from the total number
19 of beds available under paragraph (1)(B)—

20 “(i) in calendar years 1995 and 1996,
21 20 beds;

22 “(ii) in calendar years 1997, 1998,
23 and 1999, 40 beds; and

24 “(iii) in calendar year 2000 and for
25 each calendar year thereafter, a number of

beds determined based on a formula (as provided by the Secretary) distributing beds to States on the basis of the relative percentage of women of childbearing age in a State.

“(B) REALLOCATION OF BEDS.—The Secretary shall provide that in allocating the number of beds made available to a State for the furnishing of services under this section that, to the extent not all States are exercising the option of providing services under this section and there are beds available that have not been allocated in a year as provided in paragraph (1)(B), that such beds shall be reallocated among States which are furnishing services under this section based on a formula (as provided by the Secretary) distributing beds to States on the basis of the relative percentage of women of childbearing age in a State.

“(C) INDIAN HEALTH SERVICE AREAS.—In addition to the beds allowed to be allocated under paragraph (1)(B) there shall be an additional 20 beds allocated in any calendar year to States for each Indian Health Service area within the State to be utilized by Indian Health

1 Facilities within such an area and, to the extent
2 such beds are not utilized by a State, the beds
3 shall be reapportioned to Indian Health Service
4 areas in other States.”.

5 (3) MAINTENANCE OF STATE FINANCIAL EF-
6 FORT AND 100 PERCENT FEDERAL MATCHING FOR
7 SERVICES FOR INDIAN AND NATIVE ALASKAN
8 WOMEN IN INDIAN HEALTH SERVICES AREAS.—Sec-
9 tion 1903 of the Social Security Act (42 U.S.C.
10 1396b) is amended by adding at the end the follow-
11 ing new subsections:

12 “(x) No payment shall be made to a State under this
13 section in a State fiscal year for alcoholism and drug de-
14 pendency residential treatment services (described in sec-
15 tion 1931) unless the State provides assurances satisfac-
16 tory to the Secretary that the State is maintaining State
17 expenditures for such services at a level that is not less
18 than the average annual level maintained by the State for
19 such services for the 2-year period preceding such fiscal
20 year.

21 “(y) Notwithstanding the preceding provisions of this
22 section, the Federal medical assistance percentage for pur-
23 poses of payment under this section for services described
24 in section 1931 provided to individuals residing on or re-

1 ceiving services in an Indian Health Service area shall be
2 100 percent.”.

3 (b) PAYMENT ON A COST-RELATED BASIS.—Section
4 1902(a)(13) of the Social Security Act (42 U.S.C.
5 1396a(a)(13)) is amended—

6 (1) by striking “and” at the end of subpara-
7 graph (E);

8 (2) by adding “and” at the end of subpara-
9 graph (F); and

10 (3) by adding at the end the following new sub-
11 paragraph:

12 “(G) for payment for alcoholism and drug
13 dependency residential treatment services which
14 the State finds, and makes assurances satisfac-
15 tory to the Secretary, are reasonable and ade-
16 quate to meet the costs which must be incurred
17 by efficiently and economically operated facili-
18 ties in order to provide all the services listed in
19 section 1931(b) in conformity with applicable
20 Federal and State laws, regulations, and quality
21 and safety standards and to assure that individ-
22 uals eligible for such services have reasonable
23 access to such services;”.

24 (c) CONFORMING AMENDMENTS.—

1 (1) CLARIFICATION OF OPTIONAL COVERAGE
2 FOR SPECIFIED INDIVIDUALS.—Section 1902(a)(10)
3 of the Social Security Act (42 U.S.C. 1396a(a)(10))
4 is amended, in the matter following subparagraph
5 (F)—

6 (A) by striking “; and (XI)” and inserting
7 “, (XI)”;

8 (B) by striking “, and (XI)” and inserting
9 “, and (XII)”;

10 (C) by inserting before the semicolon at
11 the end the following: “, and (XIII) the making
12 available of alcoholism and drug dependency
13 residential treatment services to individuals de-
14 scribed in section 1931(d) shall not, by reason
15 of this paragraph, require the making of such
16 services available to other individuals”.

17 (2) CONTINUATION OF ELIGIBILITY FOR ALCO-
18 HOLISM AND DRUG DEPENDENCY TREATMENT FOR
19 PREGNANT WOMEN FOR 12 MONTHS FOLLOWING
20 END OF PREGNANCY.—Section 1902 of the Social
21 Security Act (42 U.S.C. 1396a) is amended in sub-
22 section (e)(5) by striking “under the plan,” and all
23 through the period at the end and inserting “under
24 the plan—

1 “(A) as though she were pregnant, for all preg-
 2 nancy-related and postpartum medical assistance
 3 under the plan, through the end of the month in
 4 which the 60-day period (beginning on the last day
 5 of her pregnancy) ends; and

6 “(B) for alcoholism and drug dependency resi-
 7 dential treatment services under section 1931
 8 through the end of the 1-year period beginning on
 9 the last day of her pregnancy.”.

10 (3) REDESIGNATIONS.—Section 1902 of the So-
 11 cial Security Act (42 U.S.C. 1396a) is further
 12 amended—

13 (A) in subsection (a)(10)(C)(iv), by strik-
 14 ing “(21)” and inserting “(24)”; and

15 (B) in subsection (j), by striking “(22)”
 16 and inserting “(25)”.

17 (d) ANNUAL EDUCATION AND TRAINING IN INDIAN
 18 HEALTH SERVICE AREAS.—The Secretary of Health and
 19 Human Services in cooperation with the Indian Health
 20 Service shall conduct on at least an annual basis training
 21 and education in each of the 12 Indian Health Service
 22 areas for tribes, Indian organizations, residential treat-
 23 ment providers, and State health care workers regarding
 24 the availability and nature of residential treatment serv-

1 ices available in such areas under the provisions of this
2 Act.

3 (e) EFFECTIVE DATE; TRANSITION.—(1) The
4 amendments made by this section apply to alcoholism and
5 drug dependency residential treatment services furnished
6 on or after July 1, 1995, without regard to whether or
7 not final regulations to carry out such amendments have
8 been promulgated by such date.

9 (2) The Secretary of Health and Human Services
10 shall not take any compliance, disallowance, penalty, or
11 other regulatory action against a State under title XIX
12 of the Social Security Act with regard to alcoholism and
13 drug dependency residential treatment services (as defined
14 in section 1931(a) of such Act) made available under such
15 title on or after July 1, 1995, before the date the Sec-
16 retary issues final regulations to carry out the amend-
17 ments made by this section, if the services are provided
18 under its plan in good faith compliance with such amend-
19 ments.

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